

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                        |   |   |
|------------------------|---|---|
| <b>ARIAN O’CONNOR,</b> | ) |   |
| <b>Petitioner,</b>     | ) | <b>C.A. No. 19-264 Erie</b>                 |
|                        | ) |   |
| <b>v.</b>              | ) | <b>District Judge Susan Paradise Baxter</b> |
|                        | ) | <b>Magistrate Judge Richard A. Lanzillo</b> |
| <b>WARDEN TRATE,</b>   | ) |   |
| <b>Respondent.</b>     | ) |   |

**MEMORANDUM ORDER**


This action for habeas corpus relief was received by the Clerk of Court on September 11, 2019. In his habeas petition, Petitioner seeks relief under 28 U.S.C. § 2241, pursuant to the “savings clause” of 28 U.S.C. 2255(e), which allows a federal prisoner to challenge the validity of his underlying conviction where it “appears that the remedy by [§2255 petition] is inadequate or ineffective to test the legality of his detention.” The petition was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

On August 5, 2022, Magistrate Judge Lanzillo issued a Report and Recommendation (“R&R”) recommending that the petition be denied, with prejudice [ECF No. 33]. In particular, Judge Lanzillo found that, although Petitioner has met the jurisdictional requirements of § 2255’s savings clause under In re Dorsainvil, 119 F.3d 245 (3d Cir. 1997), he cannot prevail on his claim of actual innocence because he has “failed to establish that, had the district court correctly advised him of the *mens rea* element of a felon-in-possession offense, there is a reasonable probability that he would not have pled guilty” (Id. at p. 9) (citing Greer v. United States, \_\_\_\_ U.S. \_\_\_\_, 141 S. Ct. 2090, 2097 (2021)). Petitioner has not filed any Objections to the R&R.

Thus, after *de novo* review of the petition and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 24th day of August 2022,

IT IS HEREBY ORDERED that the within petition for a writ of habeas corpus is DISMISSED, with prejudice, and the report and recommendation of Magistrate Judge Lanzillo, issued on August 5, 2022 [ECF No. 33], is adopted as the opinion of this Court. As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."

  
SUSAN PARADISE BAXTER  
United States District Judge

cc: The Honorable Richard A. Lanzillo  
United States Magistrate Judge

All parties of record